

Jury Instruction No. _____

PART II

The Law as Related to Plaintiff's Claims

Plaintiff Daniel Black alleges that in response to filing a formal complaint, with Milwaukee County about the conduct of its then-current sheriff Defendant David Clarke, Jr., Clarke retaliated against Black by making threatening, harassing, intimidating and/or humiliating public posts about Black on the Sheriff's Department's official Facebook page. Facebook is a social media platform or internet site reportedly having at least two billion users.

Black claims that when Clarke engaged in this conduct Clarke violated Black's First Amendment free speech rights.

To prevail on his claim, Black must show or prove the following three elements: (1) he engaged in activity protected by the First Amendment; (2) he suffered a deprivation that would likely deter First Amendment activity in the future; and (3) the First Amendment activity was at least a motivating factor in Clarke's decision to take the retaliatory action.

Black and Clarke agree that when Black filed a formal complaint against Clarke that Black engaged in activity protected by the First Amendment. Therefore, element # 1 has been proved.

Black and Clarke also agree that Clarke's postings about Black on the Sheriff Department's official Facebook page was motivated by Black's activity protected by the First Amendment. Therefore, element # 3 has been proved.

The only question, then, is whether Clarke's Facebook posts would likely deter First Amendment activity in the future.

If you find that Black has proved element # 2, by a preponderance of the evidence, then your verdict must be for Black. You must answer Question No. 1 on the Special Verdict form “yes” and then proceed to answer Question No. 2 and Question No. 3. If you answer Question No. 3 “yes” then you must also answer Question No. 4.

If you find that Black has not proved element # 2, by a preponderance of the evidence, then your verdict must be for Clarke. You must answer Question No. 1 on the Special Verdict form “no” and you will not answer the following three questions.